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CDx Diagnostics, Inc. and

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CDX DIAGNOSTICS, INC., and  
SHARED MEDICAL RESOURCES, LLC,

## Plaintiffs,

V.

HISTOLOGICS, LLC, POPLAR  
HEALTHCARE PLLC, MATTISON  
PATHOLOGY LLP, AND JOHN DOES 1-  
30,

## Defendants.

Case No. CV13-07909 DOC (RNBx)

**NOTICE OF SHARED MEDICAL  
RESOURCES, LLC AND CDX  
DIAGNOSTICS, INC.'S MOTION TO  
DISMISS HISTOLOGICS, LLC'S  
INVALIDITY, INEQUITABLE  
CONDUCT, UNENFORCEABILITY  
AND FRAUD AFFIRMATIVE  
DEFENSES AND COUNTERCLAIMS**

[MEMORANDUM OF POINTS AND  
AUTHORITIES, DECLARATIONS OF  
PETER BERGER, DAN OLSEN, AND  
MARK RUTENBERG, AND  
PROPOSED ORDER SUBMITTED  
CONCURRENTLY HEREWITH]

Date: April 21, 2014  
Time: 8:30 a.m.  
Courtroom: 9D

## AND RELATED COUNTERCLAIMS

1 **TO THE CLERK OF THE COURT AND ALL PARTIES AND THEIR  
2 ATTORNEYS OF RECORD HEREIN:**

3 **PLEASE TAKE NOTICE** that at 8:30 a.m. on April 21, 2014, or as soon thereafter  
4 as the matter may be heard in Courtroom 9D of this Court, located at 411 W. Fourth St.,  
5 Santa Ana, California, Shared Medical Resources, LLC ("SMR") and CDx Diagnostics,  
6 Inc. ("CDx") will and hereby move this Court for an order, pursuant to Federal Rule of  
7 Civil Procedure 12 and this Court's inherent powers, dismissing Histologics, LLC's Third  
8 Affirmative Defense (Invalidity), Fifteenth Affirmative Defense (Inequitable Conduct and  
9 Fraud), Counterclaim Count 2 (Declaratory Judgment of Invalidity of U.S. Patent No.  
10 6,258,044), and Counterclaim Count 3 (Declaratory Judgment of Unenforceability of U.S.  
11 Patent No. 6,258,044 ("the '044 patent")).

12 SMR and CDx base this motion, brought under Federal Rule of Civil Procedure  
13 12(c), on the grounds that Histologics and those in privity with Histologics are barred, as  
14 previous owners and assignors of the '044 patent, by the doctrine of assignor estoppel from  
15 claiming the '044 patent is invalid or unenforceable.

16 SMR and CDx base this motion upon this notice, the following memorandum of  
17 points and authorities, all pleadings, records, and documents on file in this case, and such  
18 additional evidence and argument as may be properly introduced.

19 Pursuant to Local Rule 7-3, on or about January 23, 2014, counsel for Plaintiffs  
20 contacted counsel for Histologics to meet and confer regarding the basis for Plaintiffs'  
21 motion. Counsel for Plaintiffs made several further efforts to confer with counsel for  
22 Histologics regarding this motion, but was unable to obtain Histologics' agreement to the  
23 relief it now seeks.

24  
25 Dated: March 21, 2014

**ONE LLP**

26  
27 By: /s/ Nathaniel Dilger  
28 Nathaniel L. Dilger, Esq.

# LEVI SOHN BERGER LLP

By: /s/ Peter Berger

Peter L. Berger (*Pro Hac Vice*)

*Attorneys for Plaintiffs and Counter-Defendants,  
CDx Diagnostics, Inc. and  
Shared Medical Resources, LLC*